THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 15066 of 2004

Date: 26.09.2005

Between:

Vallabhaneni Phanikumar, s/o. Venkateswara Rao,

R/o. Chevuru village, Mudinepalli mandal,

Krishna district

…Petitioner

and

1)Govt. of Andhra Pradesh, rep. by its Secretary,

Law Department, Secretariat buildings, Hyderabad

& 3 others

…Respondents

ORDER:

1. Challenging the action of the first respondent in issuing G.O. Rt. No.1470 Law (L.A. & J Courts A2) Department, dated 16.08.2004, and for consequential direction to conduct the trial in Sessions Case

No.165 of 2003 on the file of the IX Additional Sessions Judge, Krishna at Machilipatnam by the Public Prosecutor of that Court or any other Public Prosecutor at Machilipatnam, the present Writ Petition is filed.

2. The brief facts that are necessary for disposal of this Writ Petition are as follows:

The petitioner is accused no.5 in Sessions Case No.165 of 2003 on the file of IX Additional Sessions Judge, Krishna at Machilipatnam and the regular Addl. Public Prosecutor of that Court was conducting the trial; that during trial, on the application of the third respondent to the Government to appoint the fourth respondent as Special Public Prosecutor to conduct trial in that case and under political pressure, the G.O.Rt. No.1470, dated 16.08.2004 was issued appointing the fourth respondent as Special Public Prosecutor, which is highly arbitrary and illegal; three other Additional Public Prosecutors attached to various Sessions Courts are available in the same premises; the third respondent can not choose her advocate to be appointed as Public Prosecutor to conduct the case, instead she can engage a counsel under Section 301 Cr.P.C. to assist the Prosecutor; the petitioner and other accused can not expect impartial prosecution in the hands of the fourth respondent, being supporter of rival political party; hence, the Writ Petition.

3 . The second respondent filed counter affidavit denying the averments in the petition and contending that as the Additional Public Prosecutor attached to the said Court refused to conduct prosecution in the said Sessions case, name of the fourth respondent was recommended for appointment as Special Public Prosecutor; that the Government is empowered to appoint Special Public Prosecutor, and so, after careful examination of the proposal, issued the G.O. Rt. No.1470, dated 16.08.2004 appointing the fourth respondent as Special Public Prosecutor to conduct the Sessions case; hence, the

Writ Petition is liable to be dismissed.

4 . The learned counsel for the petitioner contended that the third respondent has no right to choose a particular advocate to be appointed as a Special Public Prosecutor to conduct prosecution and hence, he prayed to allow the Writ Petition.

5 . On the other hand, the learned Government Pleader for Home appearing for the respondents 1 and 2 contended that basing on the recommendations of the District Collector, the first respondent appointed the fourth respondent as Special Public Prosecutor and that as per Section 24(8) Cr.P.C., the Government can appoint Special Public Prosecutor; hence, he prayed to dismiss the Writ Petition.

6 . The counsel for the third respondent contended that the Government is empowered to appoint an advocate as Special Public Prosecutor in pursuance of the recommendations made by the District Collector and hence, the impugned order does not suffer from any infirmities.

7. Section 24(8) Cr.P.C. reads as follows:

> “The Central Government or State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.”

The above provision makes it clear that the Government can appoint an advocate as Special Public Prosecutor to conduct a criminal case pending before a Court of Sessions. The only grievance of the petitioner is that the representation of the third respondent would clearly indicate that name of the fourth respondent was suggested to

the Government and therefore, he can not be appointed. In a decision in *Seshagiri Rao v. Government of A.P. & others,* this Court in similar circumstances held as follows: (paras 23, 24 & 25)

> "The office of the Public Prosecutor is unique in its nature and status and it can not be permitted to be controlled by, or slipped into the hands of private individuals. Request can certainly be made by a complainant, in a given case, for appointment of Special Public Prosecutor. However, it shall not be open to the complainant to name a person of his choice for such appointment. The question as to whether or not it is necessary to appoint a Special Public Prosecutor in a case, and if so, the person to be appointed as such, shall be within the discretion and prerogative of the State. The State can not surrender its discretion to the choice of an individual. The exercise, and the conclusion arrived at in this regard, are required to be evident from the order of appointment itself. They can not be inferred from silence or supported by remarks in this note files.
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> Neither from the impugned order nor from the file circulated to this Court, it is evident that the Government had exercised its discretion in the manner as required under the Code in the matter of appointment of the 2nd respondent as Special Public Prosecutor. On the other hand, they reflect that the 2nd respondent came to be appointed, only on the request made by the 3rd respondent. Such a course of action is impermissible in law.
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> Though the petitioner can not have a right to choose a person of his choice to act as Special Public Prosecutor, he can certainly raise an objection for the appointment of any individual as Special Public Prosecutor. There used to be some doubt as to whether an accused has *locus standi* to raise such an objection for the appointment of a Special Public Prosecutor. That controversy was resolved by this Court in Brahmanandam case (supra) and it was ultimately held that an accused has the *locus standi* to challenge the appointment of a Special Public Prosecutor if the circumstances warrant. Such *locus standi* was conferred on the accused on the principle that fairness in the prosecution should not only be ensured, but should also appear to exist. A genuine and reasonable apprehension in the mind of the accused as regards independence of Special Public Prosecutor cannot be brushed aside. …"

8 . In this case also, name of the fourth respondent has been

suggested by the third respondent for appointment as Special Public Prosecutor. The Government also filed counter affidavit stating that name of fourth respondent was recommended by the second respondent to the Government on the representation of the third respondent to appoint him as Special Public Prosecutor to conduct prosecution in Sessions Case No. 165 of 2003 on the file of the IX Additional Sessions Judge (FTC), Krishna at Machilipatnam. It would be a different matter if the third respondent had requested to appoint any suitable advocate as Special Public Prosecutor to conduct the prosecution in the criminal case. But, here is a case where the third respondent suggested name of a particular advocate viz. the fourth respondent, for appointment as Special Public Prosecutor. Therefore, in view of the aforesaid decision of this Court, such a practice of appointment of Special Public Prosecutor at the choice of the parties, is not desirable. However, it is always left open to the second respondent to recommend name of suitable advocates for appointment as Special Public Prosecutor to conduct the said Sessions Case.

The Writ Petition is, accordingly, allowed setting aside the impugned G.O. No.1470 Law (L.A. & J. Courts A2) Department, dated 16.08.2004. The second respondent is directed to send a panel of suitable advocates for appointment as Special Public Prosecutor as expeditiously as possible. No costs.

(K.C.Bhanu, J.)

26.09.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Bilal Nazki, the Acting Chief Justice on

Monday the twenty sixth day of September two thousand and five.

…Registrar